the Defense Office of Hearings and Appeals, Arlington VA, either in person or by video teleconference. Each party shall bear their own costs.

(b) In any DOHA hearing held in response to a request under § 767.20(f), the Administrative Judge will render a final written Decision which is binding on all parties.

§ 767.22 Final administrative decision.

If no request for a hearing is timely filed as provided in § 767.20(f), the NOVA becomes effective as the final administrative decision and order of the Agency on the 45th day after service of the NOVA or on the last day of any delay period granted.

§ 767.23 Payment of final assessment.

(a) Respondent must make full payment of the civil penalty, enforcement costs and/or liability for damages assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of the Agency. Payment must be made by mailing or delivering to the Agency at the address specified in the NOVA a check or money order made payable in U.S. currency in the amount of the assessment to the ''Treasurer of the United States'', or as otherwise directed.

(b) Upon any failure to pay the civil penalty, enforcement costs and/or liability for damages assessed, the Agency may request the Department of Justice to recover the amount assessed in any appropriate district court of the United States, or may act under any law or statute that permits any type of recovery, including but not limited to arrest, attachment, seizure, or garnishment, of property and/or funds to satisfy a debt owed to the United States.

§ 767.24 Compromise of civil penalty, enforcement costs and/or liability for damages.

(a) The Director of the NHHC, in his/her sole discretion, may compromise, modify, remit, or mitigate, with or without conditions, any civil penalty or liability for damages imposed, or which is subject to imposition, except as provided in this subpart.

(b) The compromise authority of the Director of the NHHC under this section is in addition to any similar authority provided in any applicable statute or regulation, and may be exercised either upon the initiative of the Director of the NHHC or in response to a request by the respondent or other interested person. Any such request should be sent to the Director of the NHHC at the address specified in the NOVA.

(c) Neither the existence of the compromise authority of the Director of the NHHC under this section nor the Director's exercise thereof at any time changes the date upon which an assessment is final or payable.

§ 767.25 Factors considered in assessing penalties.

(a) Factors to be taken into account in assessing a penalty may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability; any history of prior offenses; ability to pay; and such other matters as justice may require.

(b) The Director of the NHHC may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by other relevant factors. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than the profits received from acting in violation of the SMCA, or any regulation or permit issued thereunder. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) If a respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such inability by providing verifiable, complete, and accurate financial information to the Director of the NHHC. The Director of the NHHC will not consider a respondent's inability to pay unless the respondent, upon request, submits such financial information as the Director of the NHHC determines is adequate to evaluate the respondent's financial condition. Depending on the circumstances of the case, the Director of the NHHC may require the respondent